

114TH CONGRESS
2D SESSION

S. 3334

To establish a procedure for resolving claims to certain rights-of-way.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2016

Mr. FLAKE (for himself, Mr. MCCAIN, and Mr. HELLER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To establish a procedure for resolving claims to certain rights-of-way.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Historic Routes Pres-
5 ervation Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to achieve judicial and ad-
8 ministrative efficiency for, and to reduce the costs typi-
9 cally associated with, resolving right-of-way claims under
10 R.S. 2477 by—

(1) reducing the burden on Federal courts by establishing administrative procedures and evidentiary standards for the processing of R.S. 2477 right-of-way claims; and

(2) establishing—

(A) a deadline for filing R.S. 2477 right-of-way claims;

(B) mandatory procedures for considering and acting on the R.S. 2477 right-of-way claims; and

(C) uniform legal and evidentiary standards of proof of public acceptance of R.S. 2477 right-of-way claims.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ABANDON OR ABANDONMENT.**—The terms “abandon” and “abandonment” mean normal action by the governing body of a claimant taken at a public meeting pursuant to notice that declares all right, title, and claim to a R.S. 2477 right-of-way is relinquished.

(2) **ACCEPTANCE OR ACCEPTED.**—The terms “acceptance” and “accepted” mean—

1 (A) a positive or affirmative action by a
2 State or county governmental authority on or
3 before October 21, 1976, including—

4 (i) a formal resolution or declaration
5 of ownership; or

6 (ii) the inclusion of a highway in an
7 official road map;

8 (B) the construction, improvement, or
9 maintenance of a highway by a State or county
10 governmental authority on or before October
11 21, 1976; or

12 (C) the continuous use of a highway by the
13 public for a period of not fewer than 5 consecu-
14 tive years ending on a date that is on or before
15 October 21, 1976.

16 (3) CLAIM.—The term “claim” means the as-
17 sertion of public acceptance of a R.S. 2477 right-of-
18 way filed under section 4(a).

19 (4) CLAIMANT.—The term “claimant” means
20 any State, county, political subdivision or agency of
21 a State, company, or other person asserting the pub-
22 lic acceptance of a right-of-way under R.S. 2477.

23 (5) CONSTRUCTION.—The term “construction”
24 means the physical activity reasonably necessary, ad-
25 visable, or desirable to allow continuous public use

1 over a highway according to the intended mode of
2 travel or transportation, which may be established
3 by the use of any tools or equipment, or other
4 means, including mere usage.

5 (6) CONTINUOUS PUBLIC USE.—The term “con-
6 tinuous public use” means the uninterrupted use of
7 a highway by the public for passage as often as gen-
8 erally regarded by the public to be convenient or
9 necessary depending on the character of the land
10 and the nature of the use.

11 (7) DISCLAIMER AND RELINQUISHMENT.—The
12 term “disclaimer and relinquishment” means any
13 type of deed or equivalent document in a form suit-
14 able for recordation that is approved and issued by
15 the Secretary disclaiming and relinquishing the in-
16 terest of the Federal Government in a R.S. 2477
17 right-of-way.

18 (8) EVIDENCE.—The term “evidence” means
19 any testimony, object, or document described in sec-
20 tion 5 that would be reliable, authentic, probative,
21 and persuasive in Federal district court under the
22 Federal Rules of Evidence that are in effect on the
23 date of enactment of this Act.

24 (9) HIGHWAY.—The term “highway” means
25 any road, way, or other land surface route of travel

1 that the public has the right of use for passage,
2 whether by carriage, animal, foot, or non-motorized
3 or motorized vehicle.

4 (10) IMPROVEMENT.—The term “improvement”
5 means—

6 (A) the widening of a highway;

7 (B) the horizontal or vertical realignment
8 of a highway;

9 (C) the installation (as distinguished from
10 cleaning, repair, or replacement in kind) of a
11 bridge, culvert, or other drainage structure or
12 conduit; or

13 (D) any significant change in the surface
14 composition of a highway.

15 (11) MAINTENANCE.—The term “maintenance”
16 means the preservation of an existing highway, in-
17 cluding—

18 (A) the physical upkeep of the highway;

19 (B) the repair of wear or damage to the
20 highway from natural or other causes;

21 (C) the restoration of the shape of the
22 highway; and

23 (D) the gradation of the highway or other
24 measures to ensure that the shape of the high-
25 way permits drainage.

1 (12) PUBLIC LAND.—The term “public land”
2 means land—

3 (A) that is owned, controlled by, or subject
4 to the jurisdiction of the Federal Government
5 for the benefit of the public; and

6 (B) that was not reserved on the date on
7 which a R.S. 2477 right-of-way grant was ac-
8 cepted.

9 (13) PUBLIC OR PUBLIC USER.—

10 (A) IN GENERAL.—The terms “public” or
11 “public user” mean all natural persons, includ-
12 ing Federal lessees, permittees, licensees,
13 invitees, and any other natural person that
14 holds an authorization to enter or use public
15 land.

16 (B) EXCEPTIONS.—The terms “public” or
17 “public user” do not include any Federal agent
18 or employee acting within the scope of the em-
19 ployment of the Federal agency or employee.

20 (14) R.S. 2477.—The term “R.S. 2477” means
21 section 2477 of the Revised Statutes (43 U.S.C.
22 932) repealed by section 706 of the Federal Land
23 Policy and Management Act of 1976 (Public Law
24 94–579; 90 Stat. 2793).

1 (15) R.S. 2477 RIGHT-OF-WAY.—The term
 2 “R.S. 2477 right-of-way” means an open-ended
 3 grant or dedication of land by the United States for
 4 rights-of-way allowing public use and passage, which
 5 could be accepted.

6 (16) RESERVED.—

7 (A) IN GENERAL.—The term “reserved”
 8 means action by the Secretary, before the ear-
 9 lier of a R.S. 2477 right-of-way acceptance or
 10 October 21, 1976—

11 (i) to withdraw land from the public
 12 domain;

13 (ii) to make the land unavailable for
 14 appropriation under public land laws; and

15 (iii) to dedicate the land by the
 16 United States to a specific public purpose,
 17 such as a park, military establishment, wil-
 18 derness area, tribal land, or Federal en-
 19 clave, that does not rely on a R.S. 2477
 20 right-of-way for the public purpose.

21 (B) EXCLUSION.—The term “reserved”
 22 does not apply to an action of the Secretary
 23 with respect to the designation of a wilderness
 24 study area, an area of critical environmental
 25 concern, or land with wilderness characteristics.

1 (17) SCOPE.—The term “scope” means the es-
 2 tablished width of a R.S. 2477 right-of-way as of the
 3 date of acceptance, including the area needed to
 4 meet the public convenience or safety or the exigen-
 5 cies of increased travel based on the traditional use
 6 of a highway (including permissible improvements,
 7 realignments, or relocation), and is not limited to
 8 the disturbed surface of the highway.

9 (18) SECRETARY.—The term “Secretary”
 10 means the Secretary with management jurisdiction
 11 over land owned or controlled by the United States
 12 on which a R.S. 2477 right-of-way is claimed to be
 13 located.

14 **SEC. 4. FILING OF CLAIM.**

15 (a) IN GENERAL.—During the 25-year period begin-
 16 ning on the date of enactment of this Act, a claimant as-
 17 serting the public acceptance of a right-of-way granted
 18 under R.S. 2477 may file a claim under this section.

19 (b) FORM; CONTENTS.—

20 (1) FORM.—Not later than 30 days after the
 21 date of enactment of this Act, the Secretary shall es-
 22 tablish a form to be used by claimants for filing
 23 claims under this section.

24 (2) CONTENTS.—A claim filed under subsection

25 (a) shall include—

1 (A) evidence supporting the claim; and

2 (B) proof of notice or attempted notice by
3 the claimant under subsection (d).

4 (c) PLACE OF FILING.—A claimant shall file a claim
5 in the appropriate State or regional location designated
6 by the Secretary for the filing of claims under this section.

7 (d) NOTICE.—

8 (1) IN GENERAL.—A claimant shall provide no-
9 tice of the right-of-way claim by—

10 (A) at least once per week during the 2-
11 week period immediately preceding the filing of
12 the claim, publishing in a newspaper authorized
13 to publish public notice under the laws of the
14 State in which the longest lineal part of the
15 claimed R.S. 2477 right-of-way is located, a
16 general summary of the claim, including the lo-
17 cation and general description of the claimed
18 R.S. 2477 right-of-way; and

19 (B) not later than 30 days after the date
20 on which the claim is filed, providing, or rea-
21 sonably attempting to provide, written notice of
22 the claim to all owners of land contiguous to
23 the boundary of the claimed right-of-way.

24 (2) ATTEMPTED NOTICE.—The reasonable at-
25 tempt of a claimant to provide written notice under

1 paragraph (1)(B) shall be considered to be sufficient
2 notice under this subsection if the claimant files with
3 Secretary verification of the reasonable attempt
4 under written oath or affirmation.

5 (e) EFFECT OF FAILURE TO MEET FILING DEAD-
6 LINE OR REQUIREMENTS.—If a claimant fails to comply
7 with the requirements of—

8 (1) subsection (a), the failure shall be consid-
9 ered to be an automatic irrevocable abandonment of
10 any R.S. 2477 right-of-way claim; or

11 (2) subsection (b), (c), or (d), the claim filed by
12 the claimant shall not be processed until the date on
13 which the failure to comply with those subsections is
14 cured.

15 (f) STATUTE OF LIMITATIONS.—Except as provided in
16 subsection (a), any statute of limitations for documenting
17 the R.S. 2477 right-of-way is waived.

18 **SEC. 5. EVIDENCE AND FINAL DECISION.**

19 (a) BURDEN OF PROOF.—A claimant shall have the
20 burden to prove by a preponderance of the evidence the
21 acceptance of a right-of-way under R.S. 2477.

22 (b) PRESUMPTIONS.—

23 (1) IN GENERAL.—Except in a case in which
24 the land underlying the claimed R.S. 2477 right-of-
25 way was reserved before the earlier of construction

1 of a highway on the right-of-way, or October 21,
2 1976, acceptance (including continuous public use,
3 location, construction, and scope of the R.S. 2477
4 right-of-way) shall be conclusively verified, proven,
5 and established on filing, under oath or affirmation
6 by a claimant attesting to the authenticity and accu-
7 racy, of—

8 (A) at least 2 types of evidence from
9 among the category of evidence described in
10 subsection (c)(1) relating to the R.S. 2477
11 right-of-way; or

12 (B) all 3 types of evidence described in
13 subparagraphs (A) through (C) of subsection
14 (c)(2), in the case of demonstrating scope and
15 acceptance before October 21, 1976.

16 (2) COPIES.—A copy of an original document
17 may be used as evidence in the place of the original
18 document under this section if the copy is accom-
19 panied by a written declaration, under oath by a
20 custodian, owner, or author, that the copy is an ac-
21 curate representation of the material terms of the
22 original document.

23 (3) HEARSAY.—Hearsay contained in a docu-
24 ment or otherwise provided shall be considered reli-

1 able, admissible, and probative for the purposes of
2 this Act.

3 (4) GRANT WITHDRAWAL.—Evidence produced
4 by the United States that establishes that the
5 United States reserved the land underlying the R.S.
6 2477 right-of-way before acceptance conclusively es-
7 tablishes withdrawal of the Federal grant for the
8 R.S. 2477 right-of-way.

9 (c) DESCRIPTION OF CATEGORIES OF EVIDENCE.—
10 For the purposes of actions under this Act, there are 2
11 categories of evidence that shall be considered:

12 (1) CATEGORY 1.—Category 1 evidence consists
13 of each of the following types of evidence:

14 (A) A center line or other survey con-
15 ducted by the Federal Government or duly li-
16 censed land surveyor, applying generally accept-
17 ed survey standards and procedures or the Bu-
18 reau of Land Management Manual of Surveying
19 Instructions applicable to surveys before Octo-
20 ber 21, 1976, clearly showing the public use,
21 control, construction, location, direction, begin-
22 ning and end points, length, width, and type of
23 surface of the R.S. 2477 right-of-way as of date
24 certain.

1 (B) Maps, plats, maintenance records (in-
2 cluding actual or estimated costs of mainte-
3 nance), photographs, GIS or global positioning
4 data, or other computer-generated images show-
5 ing the location of the R.S. 2477 right-of-way
6 prepared, made, edited, kept, or relied on, gen-
7 erally or on a case-by-case basis, by the Federal
8 Government, a State or local government, an
9 institution of higher education, college, or a
10 public or private organization historically, cus-
11 tomarily or regularly engaged in the prepara-
12 tion, retention, analysis, or expert interpreta-
13 tion of contemporary or historic maps.

14 (C) Historical or other records of govern-
15 ment entities or records constructed, obtained,
16 or kept by a government in the ordinary course
17 of business, including Federal, State, local, and
18 territorial records, such as records of the De-
19 partments of the Interior, Agriculture, or De-
20 fense, the Bureau of Land Management, the
21 Forest Service, the Natural Resources Con-
22 servation Service, the Soil Conservation Service,
23 General Land Office, Federal centers or en-
24 claves, the Smithsonian Institution, and the Li-
25 brary of Congress.

1 (2) CATEGORY 2.—Category 2 evidence consists
2 of each of the following types of evidence:

3 (A) Historical records (other than the
4 records included under paragraph (1)(C)), in-
5 cluding original documents, authenticated cop-
6 ies, facsimiles, and computer-transmitted im-
7 ages reliably showing evidence of construction
8 (including tools used, if any), location (includ-
9 ing dimensions), fixtures, and other structures,
10 or maintenance by a State or local government
11 of the R.S. 2477 right-of-way.

12 (B) Written statements from at least 2
13 persons, given under oath before a notary pub-
14 lic, court recorder, judge or any other govern-
15 ment official authorized by law to administer
16 oaths or otherwise authenticated reciting reli-
17 able knowledge of the facts that establish the
18 acceptance of the R.S. 2477 right-of-way.

19 (C) A title opinion prepared by a duly li-
20 censed title examiner prepared in accordance
21 with generally accepted title standards, estab-
22 lishing the title, location, and dimensions of the
23 R.S. 2477 right-of-way.

24 (d) DETERMINATION OF ABANDONMENT.—

1 (1) IN GENERAL.—Not later than 90 days after
 2 the date on which a R.S. 2477 right-of-way is con-
 3 clusively established as accepted under subsection
 4 (b)(1), the Secretary shall determine, in writing,
 5 whether the R.S. 2477 right-of-way has been pre-
 6 viously abandoned by the claimant.

7 (2) FAILURE TO MAKE DETERMINATION.—The
 8 failure of the Secretary to make a written deter-
 9 mination within the 90-day period described in para-
 10 graph (1) shall conclusively establish that the right-
 11 of-way has not been abandoned.

12 (3) FINAL AGENCY ACTION.—The determina-
 13 tion by the Secretary under paragraph (1), or the
 14 failure to make the determination by the date de-
 15 scribed in that paragraph, shall be a final agency ac-
 16 tion, subject to appeal, in accordance with section 6.

17 (e) DISCLAIMER AND RELINQUISHMENT RE-
 18 QUIRED.—

19 (1) IN GENERAL.—Subject to subsection (d),
 20 not later than 120 days after the date on which evi-
 21 dence to establish a R.S. 2477 right-of-way has been
 22 filed under this section, the Secretary shall deliver to
 23 the claimant a written document disclaiming and re-
 24 linquishing the right and interest of the United
 25 States in and to the R.S. 2477 right-of-way.

1 (2) FORM.—The disclaimer and relinquishment
 2 under paragraph (1) shall be in a form that allows
 3 the recording of the disclaimer and relinquishment
 4 in State and local real estate records.

5 (3) RECORDING.—The disclaimer and relin-
 6 quishment under paragraph (1) shall—

7 (A) be recorded in the public land records
 8 under the jurisdiction of the Secretary; and

9 (B) conclusively establish the title of the
 10 claimant to use the R.S. 2477 right-of-way.

11 (4) REVIEW.—The document delivered by, and
 12 any actions of, the Secretary under paragraph (1)—

13 (A) shall only be subject to review as pro-
 14 vided in section 6; and

15 (B) shall not be subject to—

16 (i) quiet title proceedings under sec-
 17 tion 6(d) or any other provision of law; or

18 (ii) any other judicial or administra-
 19 tive de novo or on the record reviews,
 20 claims, actions, or proceedings.

21 (5) FEDERAL REGISTER NOTICE OF FINAL
 22 AGENCY ACTION.—Not later than 30 days after the
 23 date on which the document is delivered under para-
 24 graph (1), the Secretary shall publish in the Federal

1 Register notice of the action by the Secretary under
2 that paragraph.

3 **SEC. 6. JUDICIAL REVIEW.**

4 (a) JURISDICTION.—

5 (1) FILING.—Subject to section 5(e), any case
6 or controversy arising under this Act shall be filed
7 in the district court of the United States for the ju-
8 dicial district in which the longest lineal segment of
9 the claimed R.S. 2477 right-of-way is located.

10 (2) EXCLUSIVE JURISDICTION.—A district
11 court described in paragraph (1) shall have the ex-
12 clusive jurisdiction to decide the case or controversy
13 on the record regarding the claimed R.S. 2477 right-
14 of-way, subject only to appeal or review on the
15 record by a court with appropriate Federal appellate
16 jurisdiction.

17 (b) FILING.—Any action initiated under subsection
18 (a) shall be filed not later than 30 days after the the date
19 of publication under section 5(e)(5).

20 (c) PRIOR ADJUDICATION NOT AFFECTED.—Nothing
21 in this Act affects a final settlement or final judgment in
22 any court of competent jurisdiction before the date of en-
23 actment of this Act in which the United States was a party
24 in determining rights to a R.S. 2477 right-of-way.

25 (d) ACTIONS TO QUIET TITLE UNAFFECTED.—

1 (1) IN GENERAL.—Subject to this section and
 2 section 5, Federal court actions to quiet R.S. 2477
 3 titles that involve R.S. 2477 claims previously filed
 4 under this Act in which a disclaimer and relinquish-
 5 ment are pending or have been issued are null and
 6 void.

7 (2) ALLOWABLE ACTIONS.—Any quiet title ac-
 8 tion not prohibited under paragraph (1) shall be
 9 filed during or before the date described in section
 10 4(a).

11 **SEC. 7. APPLICABLE LAW AND TIME EXTENSIONS.**

12 (a) APPLICATION OF STATE AND FEDERAL LAW.—

13 (1) IN GENERAL.—This Act shall apply with re-
 14 spect to conclusively establishing the acceptance,
 15 scope, validity, or abandonment of a R.S. 2477
 16 right-of-way.

17 (2) PREEMPTION.—In the case of any inconsist-
 18 ency or conflict between the provisions of this Act
 19 and State law, this Act shall apply in determining
 20 the acceptance, scope, validity, and abandonment of
 21 a R.S. 2477 right-of-way.

22 (b) EXTENSION.—The Secretary shall grant a one-
 23 time extension of a deadline established by this Act, for
 24 a maximum period of 1 year, for good cause, if the claim-
 25 ant submits to the Secretary, not later than 30 days before

1 the date on which the deadline expires, a written request
2 for the extension signed by the claimant under oath or
3 affirmation.

4 **SEC. 8. IMPLEMENTATION REQUIRED.**

5 (a) IN GENERAL.—Subject to section 4(e)—

6 (1) not later than 90 days after the date of en-
7 actment of this Act, the Secretary shall complete all
8 policies, procedures, delegations, forms, and any
9 other action necessary to implement this Act; and
10 (2) on the completion of the actions described
11 in paragraph (1), begin processing claims under this
12 Act.

13 (b) INJUNCTION; LIABILITY.—The duties and obliga-
14 tions of, or failure to perform by, the Secretary under this
15 section—

16 (1) are enforceable by injunction or restraining
17 order; and

18 (2) may result in official and personal civil li-
19 ability.

20 **SEC. 9. EFFECT; APPLICABILITY.**

21 (a) EFFECT ON OTHER LAWS.—Nothing in this Act
22 affects or modifies—

23 (1) title V of the Federal Land Policy and Man-
24 agement Act of 1976 (43 U.S.C. 1761 et seq.); or

1 (2) title XI of the Alaska National Interest
2 Lands Conservation Act (16 U.S.C. 3161 et seq.).

3 (b) EXCLUDED LAND.—Nothing in this Act applies
4 to or affects—

5 (1) the use of Department of Defense land or
6 land with respect to which the Department of De-
7 fense shares control or jurisdiction;

8 (2) land that is not owned by the United
9 States; or

10 (3) land within the outer boundary of—

11 (A) a unit of the National Park System; or

12 (B) a component of the National Wilder-
13 ness Preservation System.

14 **SEC. 10. REPEAL OF RESTRICTIONS ON REGULATIONS.**

15 Section 108 of the Department of the Interior and
16 Related Agencies Appropriations Act, 1997 (Public Law
17 104–208; 110 Stat. 3009–200) is repealed.

